



7710-12

POSTAL SERVICE

39 CFR Part 265

Procedures for Disclosure of Records Under the Freedom of Information Act

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: In August 2019, the Postal Service proposed to amend its Freedom of Information Act (“FOIA”) regulations regarding fee waivers. These changes would improve clarity and more closely align the regulations with both the relevant guidance from the Department of Justice’s Office of Information Policy and the relevant statute. The Postal Service did not receive any comments.

DATES: This rule is effective as of **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Joshua J. Hofer, Attorney, Federal Compliance, joshua.hofer@usps.gov, 202-268-6704.

SUPPLEMENTARY INFORMATION: In August 2019, the Postal Service proposed to amend 39 CFR part 265 (84 FR 44565). The purpose of the changes is to improve clarity and to more closely align the regulations with both the relevant guidance from the Department of Justice’s Office of Information Policy and the relevant statute, 5 U.S.C. 552(a)(4)(A)(iii). The portion of the regulations being amended concerns fee waivers. Generally speaking, fees for a FOIA request will be waived “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in

the commercial interest of the requester.” 5 U.S.C. 552(a)(4)(A)(iii). The guidance from the Department of Justice elucidates a six-factor test from this rule—two of which of which relate to the commercial interest of the requester. The amendment to 39 CFR 265.9(j)(3)(i) clarifies that the first commercial interest factor is to determine whether a commercial interest exists. The amendment to 39 CFR 265.9(j)(3)(ii) incorporates the balancing test from the statute as the second part of the commercial interest factor, along with adding a presumption concerning news media requesters. No comments were received in response to the proposed changes.

List of Subjects in 39 CFR Part 265

Administrative practice and procedure, Courts, Freedom of information, Government employees.

For the reasons stated in the preamble, the Postal Service amends 39 CFR chapter I as follows:

PART 265 – [AMENDED]

1. The authority citation for part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601; Pub. L. 114-185.

2. Amend § 265.9 by revising paragraphs (j)(3)(i) and (ii) to read as follows:

§ 265.9 Fees.

* * * * *

(j) * * *

(3) * * *

(i) Whether there is a commercial interest, as defined in paragraph (b)(1) of this section, that would be furthered by the requested disclosure. If so, then the requester will be given an opportunity to provide explanatory information regarding this consideration.

(ii) Whether any identified commercial interest of the requester in disclosure outweighs the public interest, as defined in paragraph (j)(1)(i) of this section, in disclosure. If so, then the disclosure is primarily in the commercial interest of the requester. The component ordinarily shall presume that if a news media requester has satisfied the public interest standard, the public interest is the primary interest served by the requested disclosure. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

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Joshua Hofer,

Attorney, Federal Compliance.

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